

# Exhibit 5

## Bickerstaff, Heath, Pollan & Caroom, L.L.P.

816 Congress Avenue Suite 1700 Austin, Texas 78701 (512) 472-8021 Fax (512) 320-5638 www.bickerstaff.com

December 15, 2006

### **By Federal Express**

The Honorable John K. Tanner  
Chief, Voting Section  
U.S. Department of Justice  
Civil Rights Division  
1800 G. Street N.W.  
Washington, DC 20006

RE: Submission for Preclearance under Section 5 of the Voting Rights Act for the City of Irving, Texas.

Dear Mr. Tanner:

On behalf of the City of Irving (the "City"), an incorporated City located in Dallas County, Texas, I hereby submit the following changes to election practices of the City pursuant to 42 U.S.C. §1973c.

The submitted change relates to the boundaries of city council districts. Under the city charter, five council positions require that the person elected to those positions reside in a geographic district. All elections, however, are conducted in the city at-large. Thus, the change affects the geographic area in which certain council candidates must reside. It does not affect their composition of the electorate for any position as all voters in the city may vote in every council race.

In compliance with 28 C.F.R. Part 51, we are supplying the following information on behalf of the City of Irving:

### **SECTION 51.27**

(a) A copy of any ordinance, enactment, order, or regulation embodying a change affecting voting.

A copy of the Ordinance No. 8731 approving the change in City Council Residential Election Districts was approved at a meeting of the City Council on November 16, 2006. A copy of the ordinance is attached as Exhibit 1.

Honorable John K. Tanner  
December 15, 2006  
Page 2

---

(b) A copy of any ordinance, enactment, order, or regulation embodying the voting practice that is proposed to be repealed, amended, or otherwise changed.

A copy of Ordinance No. 6945 approving the prior changes to the residential districts of the City was approved December 19, 1996 and is included with this submission as Exhibit 2. This change was precleared by the DOJ on March 24, 1997, in Submission No. 97-0910. A copy of the preclearance letter is attached as Exhibit 3.

(c) If the change affecting voting either is not readily apparent on the face of the documents provided under paragraphs (a) and (b) of this section or is not embodied in a document, a clear statement of the change explaining the difference between the submitted change and the prior law or practice, or explanatory materials adequate to disclose to the Attorney General the difference between the prior and proposed situation with respect to voting.

The difference between the old and new districts can be seen in the maps and demographic charts found at Exhibits 4, 5, 6 and 7. The proposed plan is based on the preexisting council district configuration, but is altered as necessary to bring the districts into population balance. The primary area of African-American concentration remains in District 3 and the primary area of Hispanic concentration remains in District 1. District 3, which was very near the ideal population size, was not changed. District 5, which is currently under-populated received additional population to bring it closer to the ideal district size.

Because the redistricting was done mid-decade, the population numbers are more than six years out-of-date. The council utilized 2000 census population numbers but was aware of estimates of post-census growth. Specifically, it had access to preliminary estimates of 2005 population growth by traffic safety zone prepared by the North Central Texas Council of Governments.

While the district lines were drawn on the basis of census data and population equality was measured on the basis of census data, the council consulted the estimates in an attempt to avoid drawing districts that were wildly out of line with the actual 2006 population. About two-thirds of the city's post-census growth is estimated to have occurred in District 2. This is why District 2 is drawn to be the most underpopulated district when measured by 2000 census data. Even though District 2 is underpopulated when measured by 2000 data, when measured against the more current population estimates, it is 8.93% over-populated and the largest district in the city. The plan was drawn to keep the districts within a ten percent population deviation when measured against the 2000 census, but to do so in a way that kept them as equal as reasonably possible using current estimates. The estimated population for the districts is shown in Exhibit 8.

Honorable John K. Tanner  
December 15, 2006  
Page 3

---

**(d) The name, title, address, and telephone number of the person making this submission.**

The person making this submission is C. Robert Heath at the law firm of Bickerstaff, Heath, Pollan & Caroom, L.L.P., 816 Congress Avenue, Suite 1700, Austin, Texas 78701-2443.

**(e) The name of the submitting authority and the name of the jurisdiction responsible for the change, if different.**

The submitting authority is the City of Irving, which is also the jurisdiction responsible for the change.

**(f) If the submission is not from a State or county, the name of the county and State in which the submitting authority is located.**

The City of Irving is located in Dallas County, Texas.

**(g) Identification of the person or body responsible for making the change and the mode of decision (e.g., act of State legislature, ordinance of city council, administrative decision by registrar).**

The City of Irving's City Council is responsible for making the change and did so by adopting Ordinance No. 8731 approving the change to City Council Districts. The ordinance is attached as Exhibit 1.

**(h) A statement identifying the statutory or other authority under which the jurisdiction undertakes the change and a description of the procedures the jurisdiction was required to follow in deciding to undertake the change.**

The rearrangement of City Council Districts by the City of Irving is authorized under Section 3(d) of Article IV of the Charter of the City. A copy of this section is attached as Exhibit 9.

**(i) The date of the adoption of the change affecting voting.**

The Ordinance approving the change was adopted on November 16, 2006.

**(j) The date on which the change is to take effect.**

The change will be effective upon preclearance from the DOJ. The next election that will utilize these districts will be held on May 12, 2007 with the filing period for candidates to be February 10, 2007 thru March 12, 2007.

Honorable John K. Tanner  
December 15, 2006  
Page 4

---

**(k) A statement that the change has not yet been enforced or administered, or an explanation of why such a statement cannot be made.**

The change has not yet been enforced or administered.

**(l) Where the change will affect less than the entire jurisdiction, an explanation of the scope of the change.**

Not Applicable.

**(m) A statement of the reasons for the change.**

The proposed changes in City of Irving Council Districts were necessary to conform to the requirement of Section 3(d) of Article IV of the city charter.

**(n) A statement of the anticipated effect of the change on members of racial or language minority groups.**

The change is expected to have no effect on the ability of members of racial or language minority groups to elect the candidate of their choice. It is important to understand that these are not single-member election districts. They merely establish a geographic area in which candidates for those five districts must reside. Thus, while anyone who wishes to run for the District 1 position must reside in that district, the entire city will vote on the position. Because all elections are at-large, a change in the districts does not affect any group's ability to elect the candidate of their choice. Five of the council's eight positions are elected from the residential districts; three councilmembers and the mayor are elected without any geographic residential requirement other than that they reside within the city limits.

The only possible impact the district boundaries would have on a minority group's ability to elect candidates of their choice is that it may narrow the field of potential candidates. If, for example, a district were very heavily Hispanic, then the odds are increased that candidates in that district would be Hispanic because the pool of non-Hispanic potential candidates would be relatively small. While there might be this theoretical effect on the candidate mix, the electoral impact would be unaffected, because in every case, the composition of the electorate would be the city at-large.

Even if one concluded that the district composition or a residential district had an impact on minority voting strength, the fact is that the minority percentages of the districts is essentially unchanged. Only two current districts, Districts 1 and 3, have significant minority population. District 3, which has roughly 20 percent African-American VAP, is unchanged. It was very near the ideal district population, so its boundaries were left intact. District 1 has just under 49 percent Hispanic VAP. It, however, was the largest district and had to lose about five percent of its population to bring it into population balance. When it lost that population, its Hispanic

Honorable John K. Tanner  
December 15, 2006  
Page 5

---

percentage went down slightly—*i.e.*, less than one percent. Even if this were an election district rather than merely a residential district, that sort of change should not adversely affect the Hispanic community's ability to elect candidates of their choice. Certainly, in a system where the composition of the electorate is unaffected by the change—*i.e.*, both before and after the change the electorate for these positions was the city at-large—there is no adverse impact.

(o) A statement identifying any past or pending litigation concerning the change or related voting practices.

There is no such litigation.

(p) A statement that the prior practice has been precleared (with the date) or is not subject to the preclearance requirement and a statement that the procedure for the adoption of the change has been precleared (with the date) or is not subject to the preclearance requirement, or an explanation of why such statements cannot be made.

The City of Irving's last rearrangement of City Council Election Districts was precleared by the DOJ on March 24, 1997, in Submission 97-0910. A copy of the preclearance letter is attached at Exhibit 3.

#### SECTION 51.28

##### (b) Maps

##### (1) The prior and new boundaries of the voting unit or units.

A map showing the boundaries of the City of Irving Council District as approved by Ordinance 8731 adopted on November 16, 2006 is attached as Exhibit 4. A map showing the boundaries of the Districts prior to the November 16, 2006 approval is attached as Exhibit 5. A map showing the African American population in each district is attached as Exhibit 10. A map showing the Hispanic population in each district is attached as Exhibit 11.

##### (2) The prior and new boundaries of voting precincts.

No changes have been made to the boundaries of election precincts.

##### (3) The location of racial and language minority groups.

The demographics by detail and percentage for the election districts as approved on November 16, 2006 are attached as Exhibit 6. The demographics by detail and percentage for the previous districts are attached as Exhibit 7. The geographic location of the African-

Honorable John K. Tanner  
December 15, 2006  
Page 6

---

American and Hispanic population is shown in Exhibits 10 and 11.

**(4) Any natural boundaries or geographical features that influenced the selection of boundaries of the prior or new units.**

The boundaries of the election districts in this submission utilize the boundaries of the city limits, streets, state highways and railroads and reflected census geography.

**(d) Election returns**

The election returns from the prior ten (10) years is attached as Exhibit 12.

**(f) Publicity and participation**

**(2) Copies of public notices that describe the proposed change and invite public comment or participation in hearings and statements regarding where such public notices appeared; (e.g., newspaper, radio, or television, posted in public buildings, sent to identified individuals or groups).**

A copy of the public notice and agenda of the Redistricting Committee's October 11, 2006; October 18, 2006; and October 30, 2006 meetings are attached as Exhibit 13. A copy of the public notice and agenda of the City of Irving's November 15, 2006 and November 16, 2006 meeting at which the City Council adopted the Ordinance approving the election districts is attached as Exhibit 14. These notices were posted on the bulletin board at City Hall where notices of all council meetings are posted and were available for a 72 hours period before each meeting as prescribed by Texas Government Code Chapter 551. A copy of this requirement is attached as Exhibit 15.

**(3) Minutes or accounts of public hearings concerning the proposed change.**

The audio tapes of the Redistricting Committee's meetings are available upon request per the statement in Exhibit 13. A copy of the minutes of the City Council Work Session on November 15, 2006 and the Regular meeting of the City Council on November 16, 2006 are attached as Exhibit 16.

**(g) Availability of the Submission**

The City of Irving will post notice of the availability of the submission. A copy of the notice to be posted is attached as Exhibit 17. A complete duplicate copy of this submission is available for public inspection during normal business hours at the City of Irving, City Secretary's Office, 825 W. Irving Blvd. Irving, Texas 75060.

**(h) Minority Group Contacts**

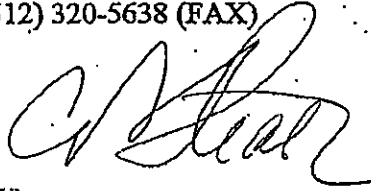
Minority Group contacts are attached as **Exhibit 18**.

It has been the purpose of this submission to provide available relevant information that will be helpful to the Department without unduly burdening the record. Please let me know if there is any underlying data or other information that the Department would find helpful when reviewing this submission.

Thank you for your assistance and consideration.

Respectfully submitted,

BICKERSTAFF, HEATH, POLLAN  
& CAROOM, L.L.P.  
816 Congress Avenue, Suite 1700  
Austin, Texas 78701-2443  
(512) 472-8021  
(512) 320-5638 (FAX)



By:  
C. Robert Heath

CRH:bb  
Enclosures



# Exhibit 6 to Preclearance

# City of Irving

## - Draft Plan A -

### 2000 Census Total and Voting Age Population

| District      | Persons        | Deviation | Hispanic %<br>of Total<br>Population | Non-Hispanic<br>Anglo %<br>of Total<br>Population | Non-Hispanic<br>Black %<br>of Total<br>Population | Non-Hispanic<br>Asian %<br>of Total<br>Population | Non-Hispanic<br>Other %<br>of Total<br>Population |
|---------------|----------------|-----------|--------------------------------------|---------------------------------------------------|---------------------------------------------------|---------------------------------------------------|---------------------------------------------------|
| 1             | 39,501         | 3.07%     | 52.83%                               | 35.93%                                            | 5.03%                                             | 4.43%                                             | 1.78%                                             |
| 2             | 36,073         | -5.87%    | 11.06%                               | 57.68%                                            | 11.56%                                            | 17.37%                                            | 2.33%                                             |
| 3             | 38,245         | -0.20%    | 22.14%                               | 45.57%                                            | 20.82%                                            | 8.41%                                             | 3.06%                                             |
| 4             | 39,185         | 2.25%     | 40.52%                               | 48.78%                                            | 4.88%                                             | 3.78%                                             | 2.04%                                             |
| 5             | 38,609         | 0.75%     | 27.56%                               | 54.14%                                            | 8.34%                                             | 7.66%                                             | 2.30%                                             |
| <b>Totals</b> | <b>191,613</b> |           | <b>31.23%</b>                        | <b>48.24%</b>                                     | <b>10.05%</b>                                     | <b>8.18%</b>                                      | <b>2.30%</b>                                      |

Ideal Size =  $191,613/5 = 38,323$  per district.

Total Maximum Deviation =  $[3.07\% - (-5.87\%)] = 8.94\%$

| District      | Total VAP*     | Hispanic %<br>of Total VAP | Non-Hispanic<br>Anglo %<br>of Total VAP | Non-Hispanic<br>Black %<br>of Total VAP | Non-Hispanic<br>Asian %<br>of Total VAP | Non-Hispanic<br>Other %<br>of Total VAP |
|---------------|----------------|----------------------------|-----------------------------------------|-----------------------------------------|-----------------------------------------|-----------------------------------------|
| 1             | 27,285         | 47.94%                     | 40.96%                                  | 4.67%                                   | 4.67%                                   | 1.76%                                   |
| 2             | 29,583         | 9.92%                      | 61.44%                                  | 10.02%                                  | 16.57%                                  | 2.05%                                   |
| 3             | 29,451         | 19.91%                     | 48.93%                                  | 19.67%                                  | 8.82%                                   | 2.67%                                   |
| 4             | 27,479         | 36.36%                     | 53.58%                                  | 4.39%                                   | 3.83%                                   | 1.84%                                   |
| 5             | 29,617         | 24.11%                     | 58.17%                                  | 7.66%                                   | 7.91%                                   | 2.15%                                   |
| <b>Totals</b> | <b>143,395</b> | <b>27.21%</b>              | <b>52.79%</b>                           | <b>9.42%</b>                            | <b>8.48%</b>                            | <b>2.10%</b>                            |

\*Voting Age Population

10/17/2006

Pl. App. 123

CIRV00000170

# City of Irving -Draft Plan A -

## 2000 Census Total and Voting Age Population

| District      | Persons        | Ideal Size | Deviation | Hispanic      | % of Total Hispanic Population | Anglo         | % of Total Anglo Population | Black         | % of Total Black Population | American Indian | % of Total American Indian Population | Asian         | % of Total Asian Population | Hawaiian-Pacific Islander | % of Total Hawaiian-Pacific Islander Population | Other      | % of Total Other Population | Two or More  | % of Total Two or More Population |
|---------------|----------------|------------|-----------|---------------|--------------------------------|---------------|-----------------------------|---------------|-----------------------------|-----------------|---------------------------------------|---------------|-----------------------------|---------------------------|-------------------------------------------------|------------|-----------------------------|--------------|-----------------------------------|
| 1             | 39,501         | 38,323     | 3.07%     | 20,687        | 52.83%                         | 14,191        | 35.93%                      | 1,987         | 5.03%                       | 209             | 0.52%                                 | 1,751         | 4.43%                       | 34                        | 0.08%                                           | 11         | 0.03%                       | 455          | 1.15%                             |
| 2             | 35,073         | 38,323     | -9.27%    | 3,968         | 11.05%                         | 20,607        | 57.88%                      | 4,169         | 11.66%                      | 125             | 0.35%                                 | 6,287         | 17.37%                      | 12                        | 0.03%                                           | 51         | 0.14%                       | 654          | 1.81%                             |
| 3             | 38,246         | 38,323     | -0.20%    | 8,466         | 22.14%                         | 17,428        | 45.57%                      | 7,963         | 20.82%                      | 219             | 0.56%                                 | 3,217         | 8.41%                       | 63                        | 0.16%                                           | 79         | 0.21%                       | 816          | 2.13%                             |
| 4             | 39,185         | 38,323     | 2.25%     | 15,879        | 40.52%                         | 18,116        | 46.25%                      | 1,914         | 4.88%                       | 191             | 0.49%                                 | 1,481         | 3.78%                       | 48                        | 0.13%                                           | 36         | 0.10%                       | 520          | 1.33%                             |
| 5             | 38,609         | 38,323     | 0.75%     | 10,641        | 27.56%                         | 20,901        | 54.14%                      | 3,221         | 8.34%                       | 171             | 0.44%                                 | 2,959         | 7.65%                       | 41                        | 0.11%                                           | 58         | 0.15%                       | 608          | 1.57%                             |
| <b>Totals</b> | <b>191,613</b> |            |           | <b>59,838</b> | <b>31.23%</b>                  | <b>92,443</b> | <b>48.24%</b>               | <b>19,254</b> | <b>10.05%</b>               | <b>905</b>      | <b>0.47%</b>                          | <b>15,674</b> | <b>8.18%</b>                | <b>199</b>                | <b>0.10%</b>                                    | <b>247</b> | <b>0.13%</b>                | <b>3,053</b> | <b>1.59%</b>                      |

Ideal Size = 181,5135 = 38,323 per district.

| District      | Total VAP      | Hispanic VAP  | % of Total Hispanic VAP | Anglo VAP     | % of Total Anglo VAP | Black VAP     | % of Total Black VAP | American Indian VAP | % of Total American Indian VAP | Asian VAP     | % of Total Asian VAP | Hawaiian-Pacific Islander VAP | % of Total Hawaiian-Pacific Islander VAP | Other VAP  | % of Total Other VAP | Two or More VAP | % of Total Two or More VAP |
|---------------|----------------|---------------|-------------------------|---------------|----------------------|---------------|----------------------|---------------------|--------------------------------|---------------|----------------------|-------------------------------|------------------------------------------|------------|----------------------|-----------------|----------------------------|
| 1             | 27,295         | 13,081        | 47.94%                  | 11,177        | 40.98%               | 1,275         | 4.67%                | 155                 | 0.57%                          | 1,273         | 4.87%                | 23                            | 0.09%                                    | 5          | 0.02%                | 286             | 1.08%                      |
| 2             | 29,583         | 2,839         | 9.92%                   | 18,183        | 61.44%               | 2,981         | 10.02%               | 106                 | 0.36%                          | 4,900         | 16.57%               | 10                            | 0.03%                                    | 36         | 0.12%                | 464             | 1.54%                      |
| 3             | 29,451         | 5,885         | 19.91%                  | 14,410        | 48.93%               | 5,783         | 19.67%               | 178                 | 0.80%                          | 2,697         | 8.82%                | 48                            | 0.16%                                    | 60         | 0.17%                | 510             | 1.73%                      |
| 4             | 27,479         | 9,692         | 35.30%                  | 14,722        | 53.58%               | 1,207         | 4.39%                | 148                 | 0.53%                          | 1,052         | 3.83%                | 21                            | 0.08%                                    | 29         | 0.11%                | 310             | 1.13%                      |
| 5             | 28,617         | 7,140         | 24.11%                  | 17,227        | 58.17%               | 2,289         | 7.86%                | 140                 | 0.47%                          | 2,343         | 7.91%                | 35                            | 0.12%                                    | 48         | 0.16%                | 416             | 1.46%                      |
| <b>Totals</b> | <b>143,385</b> | <b>39,011</b> | <b>27.21%</b>           | <b>75,898</b> | <b>52.79%</b>        | <b>13,506</b> | <b>9.42%</b>         | <b>725</b>          | <b>0.51%</b>                   | <b>12,165</b> | <b>8.48%</b>         | <b>137</b>                    | <b>0.10%</b>                             | <b>168</b> | <b>0.12%</b>         | <b>1,985</b>    | <b>1.38%</b>               |

Voting Age Population

10/17/2008